



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

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DECISION

Southern Utah Wilderness Alliance	:	Protest to the Inclusion of
Stephen Bloch, Attorney	:	Parcels in the November 21, 2006
425 East 100 South	:	Competitive Oil and Gas Lease Sale
Salt Lake City, Utah 84111	:	

Protest Granted in Part and Denied in Part

On October 6, 2006, the Bureau of Land Management (BLM) provided notice that 280 parcels of land would be offered in a competitive oil and gas lease sale scheduled for November 21, 2006. The notice indicated that the protest period for the lease sale would end on November 6, 2006. By errata sheets dated November 6, 14, and 17, 2006, 25 parcels listed in the notice were deferred from the sale and one parcel listed in the notice was deleted from the sale. The lease sale was held on November 21, 2006.

By letter to BLM dated and hand delivered on November 6, 2006, the Southern Utah Wilderness Alliance, Natural Resources Defense Council, The Wilderness Society, and the Grand Canyon Trust¹ (collectively referred to herein as "SUWA") submitted a timely protest to the inclusion of 39 parcels in the lease sale. The protested parcels are located on public lands administered by BLM's Moab, Monticello, Price, Richfield, Salt Lake, and Vernal Field Offices (FOs). The SUWA Protest lists the protested parcels as follows:

Moab FO: UT 1106-276, UT 1106-298 (2 parcels);

Monticello FO: UT 1106-264, UT 1106-336, UT 1106-338, UT 1106-339, UT 1106-341, UT 1106-343, UT 1106-345, UT 1106-346, UT 1106-348 (9 parcels);

Price FO: UT 1106-157, UT 1106-158, UT 1106-159, UT 1106-160, UT 1106-161, UT 1106-163, UT 1106-183, UT 1106-184, UT 1106-190, UT 1106-191, UT 1106-194, UT

¹The Grand Canyon Trust joined the SUWA protest concerning the following 11 parcels: UT 1106-264, UT 1106-276, UT 1106-298, UT 1106-336, UT 1106-338, UT 1106-339, UT 1106-341, UT 1106-343, UT 1106-345, UT 1106-346, and UT 1106-348.

1106-203, UT 1106-206, UT 1106-207, UT 1106-208, UT 1106-209, UT 1106-210, UT 1106-211, UT 1106-239 (19 parcels);

Richfield FO: UT 1106-182 (1 parcel);

Salt Lake FO: UT 1106-003A, UT 1106-003B, UT 1106-003G (3 parcels); and

Vernal FO: UT 1106-002, UT 1106-003, UT 1106-274, UT 1106-275, UT 1106-290 (5 parcels)

SUWA's list of protested parcels includes parcels UT 1106-157, UT 1106-158, UT 1106-159, UT 1106-160, UT 1106-161, UT 1106-163, and UT 1106-239, on Price FO managed federal public lands, and parcels UT 1106-274 and UT 1106-275 on Vernal FO managed federal public lands. By errata sheet dated November 14, 2006, these nine parcels were deferred from the sale. Consequently, the protest to the inclusion of these parcels in the sale (Protest at 4-5, 10-15, 21-24) is denied as moot and not further addressed in this decision.

SUWA's list of protested parcels includes parcels UT 1106-341, UT 1106-343, UT 1106-345, and UT 1106-346, on Monticello FO managed federal public lands. By errata sheet dated November 17, 2006, these four parcels were deferred from the sale. Consequently, the protest to the inclusion of these parcels in the sale (Protest at 19-21, 21-24) is denied as moot and not further addressed in this decision.

As a result of the deferral of the 13 above-referenced parcels, the SUWA protest effectively protests the inclusion of the following 26 parcels in the November 2006 sale:

Moab FO: UT 1106-276, UT 1106-298 (2 parcels);

Monticello FO: UT 1106-264, UT 1106-336, UT 1106-338, UT 1106-339, UT 1106-348 (5 parcels);

Price FO: UT 1106-183, UT 1106-184, UT 1106-190, UT 1106-191, UT 1106-194, UT 1106-203, UT 1106-206, UT 1106-207, UT 1106-208, UT 1106-209, UT 1106-210, UT 1106-211 (12 parcels);

Richfield FO: UT 1106-182 (1 Parcel);

Salt Lake FO: UT 1106-003A, UT 1106-003B, UT 1106-003G (3 parcels); and

Vernal FO: UT 1106-002, UT 1106-003, UT 1106-290 (3 parcels).

Offers were submitted by qualified bidders on 25 of the 26 parcels at the sale, and the remaining parcel (UT1106-003B) was purchased non-competitively after the sale. As a result, we are construing the SUWA protest as protesting the issuance of leases for all 26 parcels (hereinafter the protested parcels).

The SUWA protest contends that BLM's decision to offer and issue leases on the protested parcels violates the National Environmental Policy Act (NEPA), 42 U.S.C. 4321, et seq., and the

National Historic Preservation Act (NHPA), 16 U.S.C. 470 et seq., and their implementing regulations and policies. For the reasons set forth below, the Protest is granted in part and denied in part.

A. BLM's Inclusion of 17 of the 26 the Protested Parcels in the November 2006 Lease Sale Complies With NEPA.

SUWA contends that BLM's inclusion of the protested parcels in the lease sale failed to comply with NEPA because: (1) the Richfield and Price FOs' respective NEPA analyses were inadequate pre-leasing documents since they did not include a "no-leasing" alternative; and (2) the Moab, Price, Salt Lake and Vernal FOs did not take a hard look at whether their respective NEPA analyses were valid in light of new information or circumstances, and/or the analyses did not adequately consider impacts from oil and gas leasing and development. (Protest at 2-12, 15-19).

Background. Prior to the inclusion of the relevant parcels in the November 2006 lease sale, the Richfield and Price FOs each examined their existing NEPA analyses covering the lands included in the parcels. Based on its review, each FO determined that the analyses sufficiently assessed the environmental consequences of leasing the parcels. Each FO also used a Documentation of Land Use Plan Conformance and NEPA Adequacy Worksheet (DNA) to make and document that assessment. A DNA is an appropriate means for BLM to assess whether an existing NEPA analysis adequately analyzes the anticipated impacts of an action so that the agency may proceed without performing further NEPA review. See Pennaco Energy v. U.S. Dep't of the Interior, 377 F.3d 1147, 1162 (10th Cir. 2004); Colorado Envtl. Coal., 173 IBLA 362, 372 (2008); Ctr. for Native Ecosystems, 170 IBLA 331, 345-46 (2006); S. Utah Wilderness Alliance, 166 IBLA 270, 282-83 (2005).

Richfield FO. In September 2006, the Richfield FO completed its DNA. In the DNA, the FO determined that the following NEPA documents adequately analyzed the impacts of leasing the relevant FO parcels: the 1975 Richfield District Oil and Gas Leasing Environmental Analysis Record, 43-050-5-31 (1975 Richfield EAR); the 1975 Price District Oil and Gas Leasing Environmental Analysis Record, UT-060-6-1 (1975 Price EAR); the 1976 Fillmore District Oil and Gas Leasing Environmental Analysis Record (1976 Fillmore EAR); the 1984 Utah Combined Hydrocarbon Leasing Regional EIS 1984 (1984 CHL EIS); and the 1988 Oil and Gas Leasing Implementation EA for Henry Mountain and Sevier River Resource Areas (1988 Implementation EA). See Richfield DNA at 2-3. The FO determined that the 1975 Richfield EAR, the 1975 Price EAR, and the 1976 Fillmore EAR analyzed an appropriate range of alternatives, and that such analysis included the no-leasing alternative. See Richfield DNA at 5 (citing to 1975 Richfield EAR at 26, 1975 Price EAR at 13, and the 1976 Fillmore EAR at 11).

Price Field Office. In October 2006, the Price FO completed its DNA. In the DNA, the FO determined that the following NEPA documents, among others, adequately analyzed the impacts of leasing the relevant FO parcels: the 1975 Price District Oil and Gas Environmental Analysis Record (1975 Price EAR); the 1984 Price River Management Framework Plan Supplement (1984 MFP Supplement); the 1988 Price River Resource Area EA Supplement on Cumulative Impacts on Oil and Gas Lease Categories (1988 EA Supplement); and the 1991 San Rafael Resource Management Plan/Final EIS (1991 San Rafael RMP/EIS). See Price DNA at 2. The Price FO determined that these documents analyzed, among other things, an appropriate range of alternatives. For example, the 1975 Price EAR evaluated the proposed action, leasing, as well as

the no-leasing alternative. The 1984 MFP Supplement evaluated the alternatives of no action, leasing, leasing with special stipulations, no surface occupancy, and no leasing. The 1991 San Rafael RMP/EIS evaluated seven alternatives ranging from maximum oil and gas development to reduced production in favor of other resources values. See Price DNA at 4. In Southern Utah Wilderness Alliance (On Reconsideration), 166 IBLA 270A (2006), the Board held that the 1975 Price EAR was an adequate pre-leasing document. Among other things, the Board stated:

We agree with BLM that the 1975 Price EAR was extensive, addressed the potential environmental impacts of issuing the leases, considered the option of not issuing leases, and found that there was no significant impact. Although not denominated as an “environmental assessment,” [footnote omitted] it is the functional equivalent of an EA and thus may be construed as a NEPA document. . . . The Price EAR sets out a careful, extensive review of the environmental effects of oil and gas leasing in the Price area. We also agree that the Price EAR cannot be distinguished from the 1994 Rich County EA, which we found adequate, excepting only whether the former is adequately current. The Price EAR contains only a short discussion of an alternative not to lease lands within the entire district. However, in a manner similar to an EIS that accompanies an RMP, the EAR shows its consideration of alternatives for the land it covers by designating land as suitable for oil and gas leasing, suitable for leasing with special stipulations, or as unsuitable for leasing. Accordingly, we are not persuaded by SUWA’s argument concerning inadequate consideration of the no leasing alternative.

Id. at 270D-270E.

SUWA’s alternatives-analyses contentions. SUWA generally contends that the Richfield and Price FO’s existing NEPA documents are not adequate pre-leasing analyses with respect to Richfield FO parcel UT 1106-182 and Price FO parcels UT 1106-183, UT 1106-184, UT 1106-190, UT 1106-191, UT 1106-194, UT 1106-203, UT 1106-206, UT 1106-207, UT 1106-208, UT 1106-209, UT 1106-210, and UT 1106-211 because the documents either do not include a no-leasing alternative or, if they do, the alternative is not discussed in sufficient detail. (Protest at 2-5). SUWA apparently interprets the decision of Southern Utah Wilderness Alliance v. Kempthorne, 457 F. Supp. 2d 1253 (D. Utah 2006) (hereinafter SUWA), as supporting its contentions. In SUWA, the court set aside and remanded BLM’s inclusion of certain parcels in the November 2003 lease sale, reasoning in part that the 1975 Price EAR was not an adequate pre-leasing document because its alternatives analysis did not adequately analyze a no-leasing alternative. However, that ruling did not appear to be necessary to the ultimate holding in the case that BLM violated NEPA with respect to the 16 parcels at issue by not supplementing its existing NEPA analyses concerning wilderness characteristics of the underlying lands before issuing leases for the parcels. We believe that, as between SUWA and Southern Utah Wilderness Alliance (On Reconsideration), the Board’s decision more thoroughly examines the 1975 Price EAR and, consequently, is more persuasive concerning the adequacy of that document and the EARs challenged in the current SUWA protest. Consequently, we conclude that the 1975 Richfield EAR, relied on by the Richfield FO concerning parcel UT 1106-182, and the 1975 Price EAR, relied on by the Price FO concerning parcels UT 1106-183, UT 1106-184, UT 1106-190, UT 1106-191, UT 1106-194, UT 1106-203, UT 1106-206, UT 1106-207, UT

1106-208, UT 1106-209, UT 1106-210, and UT 1106-211 are adequate pre-leasing NEPA documents.

SUWA's "significant new information" contentions. Under 40 C.F.R. § 1502.9(c)(1), a federal agency must supplement a final NEPA analysis when "there are substantial changes in the proposed action . . . or significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts." See, e.g., Marsh v. Or. Natural Res. Council, 490 U.S. 360, 374 (1989) (A federal agency must supplement a final NEPA document if there remains federal action to occur and there is new information showing that the remaining action will affect the quality of the environment in a significant manner or to a significant extent not already considered.). SUWA claims that this principle applies to Moab FO parcel UT 1106-276 and UT 1106-298; Price FO parcels UT 1106-190, UT 1106-191, UT 1106-194, UT 1106-206, UT 1106-207, UT 1106-208, UT 1106-209, UT 1106-210, and UT 1106-211; Salt Lake FO parcel UT 1106-003G, and Vernal FO parcel UT 1106-003. SUWA claims that these parcels must be deferred from leasing until such time that BLM completes a supplemental NEPA analysis on the effects of leasing them. (Protest at 5-10).

Moab FO parcel UT 1106-276. This parcel is located on one of four units of land that BLM identified in 1999 as comprising the 4,960 acre Spruce Canyon Wilderness Inventory Area (Spruce Canyon WIA), and consisting of non-wilderness study area lands with wilderness characteristics. See U.S. Department of the Interior, Bureau of Land Management, Utah Wilderness Inventory at 132-132M (1999) (hereinafter "1999 Inventory"). In 2003, the Moab FO made revisions to the WIA lands managed by the FO, including the Spruce Canyon WIA. In this revision, the FO severed the unit lands that now include parcel UT 1106-276 from the Spruce Canyon WIA, explaining: "This parcel of BLM land (~1,082 acres) has been severed by state lands and is not part of the area with wilderness character." (Protest, Exhibit 1). Notwithstanding the plain language of the 2003 Moab FO revision that the unit which now includes parcel UT 1106-276 "is not part of the area with wilderness character", SUWA contends that (i) the parcel is on lands with wilderness characteristics, (ii) the existence of wilderness characteristics on the lands constitutes significant new information, and (iii) the parcel cannot be leased until such time that additional NEPA analysis has been completed on the potential impacts of oil and gas development on those characteristics. (Protest at 6-8). In making this contention, SUWA relies on language in the 1999 Inventory while ignoring the plain language in the Moab FO's 2003 revision that the relevant lands "are not part of the area with wilderness character." Moreover, in its current land use planning process, the Moab FO is not recognizing any wilderness characteristics on the lands that include parcel UT 1106-276. See Appendix P, Page P-4, Table P-1, Bureau of Land Management Moab Field Office, Draft Resource Management Plan and Environmental Impact Statement (August 2007). Consequently, SUWA's assertions regarding the parcel are not persuasive.

Price FO parcels UT 1106-190, UT 1106-191, UT 1106-194, UT 1106-206, UT 1106-207, UT 1106-208, UT 1106-209, UT 1106-210, and UT 1106-211. As part of the comments it submitted on the draft Price resource management plan (July 2004), SUWA provided BLM with information on what it believed constituted the wilderness characteristics of the Utah Wilderness

Coalition's (UWC's) proposed Price River² and Desolation Canyon wilderness units. In its protest, SUWA indicates that BLM had not yet reviewed such information, and contended that BLM must do so before offering (and presumably leasing) these nine parcels. (Protest at 9-10, Exhibits 4, 5, 6). BLM subsequently reviewed the submitted information and concluded that the relevant lands, which include portions or all of the nine parcels, have wilderness characteristics. Consequently, SUWA's protest is granted with respect to these nine parcels.

Vernal FO parcel UT 1106-003. As part of the comments it submitted on the draft Vernal resource management plan, SUWA provided BLM with information on what it believed constituted the wilderness characteristics of the UWC's proposed Goslin Mountain wilderness unit. In its protest, SUWA indicates that BLM had not yet reviewed such information, and contended that BLM must do so before offering (and presumably leasing) this parcel. BLM subsequently reviewed the submitted information and concluded that the relevant lands, which include the parcel, do not have wilderness characteristics. Consequently, SUWA's protest concerning parcel UT 1106-003 is denied.

Salt Lake FO parcel UT 1106-003G and Moab FO UT 1106-298. SUWA also contends that the inclusion in the lease sale of Salt Lake FO parcel UT 1106-003G and Moab FO parcel UT 1106-298 violates NEPA, but fails to set forth any grounds that would support such contention. SUWA's contentions follow the heading in its protest stating "Failure to Analyze Impacts of Oil and Gas Leasing and Development to Golden Spike National Historic Site, Arches National Park, and Hovenweep National Monument" and text that generally references case law support for the proposition that BLM has a duty to (i) be alert to the possibility of significant new information that may alter the results of a completed NEPA analyses, and (ii) consider direct, indirect, and cumulative impacts in all analyses. (Protest at 15-16).

However, in contending that BLM should not lease the two parcels, SUWA does not show the possibility of a particular impact that BLM failed to consider in the NEPA analyses underlying the lease sale, or show the existence of significant new information that would require supplemental NEPA analysis. Rather, SUWA merely points to correspondence from the Superintendents of Golden Spike National Historic Site and Arches National Park to BLM expressing concerns about impacts to resources from leasing and developing the relevant parcels, and SUWA implies that leasing the parcels in spite of the concerns expressed in the correspondence constitutes a NEPA violation. (Protest at 17). SUWA cites no authority for its implication, as there is none. On the other hand, it is well-settled that in preparing a NEPA analysis, BLM has a duty "to consider and respond to the comments of other agencies, not to agree with them." Custer County Action Ass'n v. Garvey, 256 F.3d 1024, 1038 (10th Cir. 2001) (citing 40 C.F.R. § 1503.4 and Citizens Against Burlington v. Busey, 938 F.2d 190, 201 (D.C. Cir. 1991)). As discussed below, to the extent this principle applies to BLM's inclusion of the relevant parcels in the lease sale, where it was not necessary to prepare a new NEPA analysis, the record is clear that BLM considered and responded to the National Park Service comments.

Salt Lake FO parcel UT 1106-003G. By letter dated May 30, 2006 to the Salt Lake FO, the Superintendent of Golden Spike National Historic Site (hereinafter "National Park Service" or

² Although SUWA's protest indicates that parcels UT 1106-190, UT 1106-191, UT 1106-194, UT 1106-209, UT 1106-210 and UT 1106-211 are part of the UWC proposed Price River wilderness unit, upon BLM review of SUWA's information, these parcels were severed from the Price River unit and became part of the Never Sweat Wash unit.

“NPS”) expressed concern about the inclusion of parcel UT 0806-009 in the August 2006 lease sale. The parcel consisted of sections 22, 26, 28, and 34 in T10N, R13W, SLBM. The NPS noted that the parcel’s four sections were located on or adjacent to the BLM Transcontinental Scenic Byway and expressed concern that leasing and development of oil and gas resources in the area would negatively affect the scenic, cultural, landscape, and historic features associated with the Byway. The NPS also expressed concern about the use of the historic grade (which vehicles currently may use for recreational and other purposes) in conjunction with oil and gas development. (Protest, Exhibit 11). By letter dated June 26, 2006, the Salt Lake FO responded to the NPS’ concerns. In the letter, BLM discussed its 1998 land use plan amendment for the BLM Transcontinental Railroad Grade (sometimes also referred to as the Transcontinental Scenic Byway or the historic grade) that established the Transcontinental Railroad Grade ACEC and set forth management decisions for the area within and without the ACEC. The letter explained that these decisions included establishing the viewshed outside of the ACEC as a visual resource management (VRM) Class IV area, which allows for major modification of the landscape, and stated that BLM would employ best management practices to reduce visual impacts of all oil and gas facilities. The letter also noted that another of the 1998 planning decisions was that oil and gas leasing of lands in the Transcontinental Railroad Grade would be allowed with no surface occupancy and, consequently, the Grade would not be used in conjunction with any oil and gas exploration or development. (Protest, Exhibit 12).

Parcel UT 0806-009 was awarded to the highest bidder at the August 2006 lease sale, but the bidder did not make the required payment by the close of business on the day of the sale. Consequently, the parcel was not leased and was available for inclusion in the November 2006 sale. In preparing the notice of the parcels proposed for inclusion in the sale, BLM split parcel UT 0806-009 into two parcels: (1) UT 1106-003F, consisting of sections 26 and 34; and (2) UT 1106-003G, consisting of sections 22 and 28 (as well as 40.2 acres in section 27). The NPS did not provide any comments to BLM regarding the inclusion of any parcels in the November 2006. Although, SUWA did not protest the inclusion of parcel UT 1106-003F, as noted above, SUWA protested the inclusion of UT 1106-003G in the sale. SUWA’s protest primarily relies on the NPS’ May 30, 2006 letter concerning the inclusion of Parcel UT 0806-009 in the August 2006 sale. However, the record is clear that BLM considered and responded to the NPS’ concerns. Moreover, given that the NPS did not express any concerns about the inclusion of parcel UT 1106-003G in the sale, SUWA’s reliance on the NPS’ May 30, 2006 letter is misplaced.

SUWA also acknowledges BLM’s 1998 plan amendment for the Railroad Grade, but claims that that planning process “did not anticipate and evaluate the current level of interest for oil and gas leasing and development in these remote portions of the [Salt Lake] field office[]” and “thus did not analyze whether additional protective stipulations were necessary to protect the integrity of this National Historic site.” (Protest at 17.) As a preliminary matter, any challenge to the plan amendment is time-barred. Moreover, given the Board’s decisions such as Biodiversity Conservation Alliance, et al., 174 IBLA 1 (2008) and National Wildlife Federation, 170 IBLA 240 (2006), rejecting specific challenges to reasonably foreseeable development assumptions on oil and gas development underlying planning and activity level decisions, SUWA’s general contentions regarding BLM’s 1998 plan amendment for the Railroad Grade lack merit. Consequently, SUWA’s protest concerning parcel UT 1106-003G is denied.

Moab parcel UT 1106-298. SUWA’s protest as it pertains to parcel UT 1106-298 relies entirely on correspondence from the NPS to BLM expressing concerns about the inclusion of parcels UT

1106-317 and UT 1106-298 in the November 2006 sale and, for the same reasons set forth above, is rejected. By letter dated August 28, 2006 to the Moab FO, the Superintendent of Arches National Park (hereinafter “National Park Service” or “NPS”) stated that development of the two parcels, located along the Colorado River upstream from Arches and Canyonlands National Parks, had the potential to impact water quality in the River, and cause “noise and visual intrusion[s] on the high quality river recreation experience presently provided in the area.” (Protest, Exhibit 13). Contrary to the assertion in SUWA’s protest, the NPS did not request BLM to defer leasing UT 1106-298.

By letter dated October 10, 2006 to the Superintendent, NPS, Southeast Utah Group, BLM’s Deputy State Director advised the NPS that parcel UT 1106-317 had been deferred from the sale because of new information on the parcel containing crucial deer winter range. BLM advised the NPS that the Colorado River runs diagonally through parcel UT 1106-298, and that because of the steep canyon walls and the no surface occupancy (NSO) stipulation applying to parcel lands within ¼ mile of the River, any drill sites that might eventually be established would be located on the mesa tops above the River. As a result, BLM believed it was highly unlikely that any development might cause impacts to water quality in the River or to the river recreation experience. BLM further noted that these potential impacts would be considered during any site-specific analysis and any appropriate mitigation or approval conditions would be determined at that time.

In its protest, SUWA correctly notes that although BLM’s October 10, 2006 letter referred to an NSO stipulation on any of the parcel’s lands situated within ¼ mile of the Colorado River, there are no stipulations attached to the parcel. SUWA then suggests that because there are no special stipulations attached to the parcel, it will not be possible to “protect sensitive landscapes.” (Protest at 19). As a matter of clarification, the reference to the NSO stipulation in BLM’s letter was inadvertent and unnecessary, as the parcel size and location was changed between the time it was first considered for inclusion in the sale and Moab’s preparation of the DNA and, as a result, before BLM’s preparation of the final list for the lease sale. Currently, the parcel is located on the east side of the Colorado River, more than ¼ mile from the River. Any well location(s) on the parcel would be on the top of the mesa, more than 1,000 feet above the River. Consequently, SUWA’s suggestion that leasing and development of the parcel will cause adverse impacts to the water quality and river recreation resources discussed in the NPS’ August 28, 2006 letter to BLM lacks support. Moreover, as with its protest to Salt Lake FO parcel UT 1106-003G, because SUWA’s protest to Moab parcel UT 1106-298 does not attempt to demonstrate the possibility of a particular impact from leasing or development that BLM failed to consider in the NEPA analyses supporting the lease sale, or show the existence of significant new information relative to the parcel that would require supplemental NEPA analysis, or show that BLM failed to consider or respond to the NPS comments on the parcel, the protest lacks merit. Consequently, SUWA’s protest concerning parcel UT 1106-298 is denied.

B. BLM’s Inclusion of All of the Protested Parcels in the November 2006 Lease Sale Complies with the NHPA.

SUWA makes two arguments in contending that BLM did not comply with the requirements of the NHPA in the Section 106 consultation it completed in connection with the November 2006 lease sale. SUWA first argues that although the Monticello FO’s DNA and its cultural resources report reached a “no historic properties affected” determination concerning the protested parcels

on FO-administered federal public lands (UT 1106-264, UT 1106-336, UT 1106-338, UT 1106-339, UT 1106-348), that determination is undercut by the FO archaeologist's statement that "it has been determined that reasonable development could occur without impacts to eligible cultural properties." (Protest at 22). This first argument of SUWA obviously misinterprets the archaeologist, has no merit, and deserves no further response. SUWA's second argument is that all of the FOs failed to adequately consult with members of the public such as SUWA in the Section 106 consultation process. This argument lacks merit and is rejected.

To comply with the NHPA at the oil and gas leasing stage, BLM must: (1) identify the area of potential effect (APE) under consideration; (2) identify properties within the APE that are listed as historic properties or eligible for inclusion in the National Register of Historic Places; and (3) determine whether the proposed leasing may have adverse effects on the listed or eligible properties. In the event BLM concludes that the leasing may have adverse effects, it must identify ways of avoiding, minimizing, or mitigating those adverse effects. If BLM is conducting the Section 106 consultation process under the 36 C.F.R. Part 800 regulations, it must seek the concurrence of the Utah State Historic Preservation Officer (Utah SHPO) in BLM's determination. See 36 C.F.R. § 800.4(d). If BLM is conducting the process under the 2001 Protocol Agreement between the Utah BLM and the Utah SHPO, BLM is not required to seek the concurrence of the Utah SHPO if it determines that no listed or eligible properties are present or that there would not be an adverse effect on properties that are present. See Protocol VII.A.C. Each of the FOs properly completed these steps and, in completing these steps, provided for adequate public participation in the process.

SUWA contends that BLM did not adequately consult with members of the public such as SUWA concerning the November 2006 sale in accordance with the NHPA and Section IV.C of the Protocol, which states that "BLM will seek and consider the views of the public when carrying out the actions under the terms of this Protocol" (Protest at 22-24). However, SUWA has not cited to any authority as to the degree of public involvement required by the NHPA or the Protocol, nor has it identified what type of public involvement it believes is necessary.

SUWA's contention overlooks that BLM's oil and gas program is a staged and ongoing process, and that specific implementations of the program have been analyzed in several NEPA documents with public involvement beginning in the 1970s. The first stage of this process is the land use planning stage at which decisions, such as which lands may be designated as available for oil and gas leasing, occur. The land use planning process for the Moab, Monticello, Price, Richfield, Salt Lake, and Vernal FOs has involved the preparation of EAs and EISs³ that included opportunities for public participation at various stages in the process, including scoping, public comment on the draft documents, and the opportunity for public protest of planning decisions to the BLM Director.

The second stage of BLM's oil and gas program consists of its quarterly sales, for which public notice is provided. At this point, members of the public have the opportunity to become apprised of the specific parcels proposed for lease and, prior to sale, provide input to BLM on any matter related to the sale, including information on the presence of cultural resources or concerns about

³ The governing land use plan for some of the Price FO parcels at issue in SUWA's protest is the Price Resource Area Management Framework Plan (MFP), which predates RMPs and is not a NEPA document, but was prepared subject to public review and input, as were the 1975 Price EAR, the 1984 MFP Supplement, the 1988 Supplemental EA, and the 1991 San Rafael RMP/EIS.

potential impacts to such resources. In the event BLM completes a DNA in connection with a sale, that document and all underlying documents are made available to the public on request. At the third stage, the application for permit to drill (APD) stage, BLM prepares additional NEPA analysis on the relevant proposed development. At this point, the public has additional opportunities to participate in the process, through scoping and review of and comment on the relevant document, and again may provide BLM with information regarding cultural resources or advise BLM of concerns about potential impacts to such resources.

With respect to the November 2006 sale, BLM provided notice of the sale, including listing the specific parcels proposed for inclusion in the sale, for a minimum of 60 days. As demonstrated by the SUWA Protest, members of the public had the opportunity to provide input to BLM on any concerns regarding the parcels proposed for inclusion in the sale and the opportunity to protest such inclusion. Although SUWA now argues that BLM failed to adequately consult with members of the public, SUWA has not informed BLM what degree of public participation is required under the NHPA or the Protocol, or provided any legal authority for its conclusory assertions. Moreover, SUWA has not suggested, much less shown, that BLM's Section 106 Consultation has overlooked a potentially eligible property. Consequently, SUWA's contentions on this subject are without merit and are rejected.

C. Conclusion

For the above-stated reasons, BLM grants SUWA's protest concerning parcels UT 1106-190, UT 1106-191, UT 1106-194, UT 1106-206, UT 1106-207, UT 1106-208, UT 1106-209, UT 1106-210, and UT 1106-211, and denies SUWA's protest concerning parcels UT 1106-276, UT 1106-298, UT 1106-264, UT 1106-336, UT 1106-338, UT 1106-339, UT 1106-348, UT 1106-183, UT 1106-184, UT 1106-203, UT 1106-182, UT 1106-003A, UT 1106-003B, UT 1106-003G, UT 1106-002, 1106-003, and 1106-290, offered at the November 21, 2006 oil and gas lease sale. BLM will issue leases for the relevant parcels after issuing this decision and any other necessary protest decisions.

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 C.F.R. Part 4 and the enclosed Form 1842-1. If an appeal is taken, the notice of appeal must be filed in this office (at the address shown on the enclosed Form) within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition for a stay pursuant to 43 C.F.R. Part 4, Subpart B § 4.21, during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay must show sufficient justification based on the standards listed below. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulations, a petition for a stay of a decision pending appeal shall be evaluated based on the following standards:

1. The relative harm to the parties if the stay is granted or denied;

2. The likelihood of the appellant's success on the merits;
3. The likelihood of immediate and irreparable harm if the stay is not granted; and
4. Whether the public interest favors granting the stay.

Copies of the notice of appeal, petition for stay, and statement of reasons also must be submitted to each party named in this decision and to the Office of the Regional Solicitor, Intermountain Region, 125 South State Street, Suite 6201, Salt Lake City, Utah 84138, at the same time the original documents are filed in this office. You will find attached a list of those parties who purchased the subject parcels at the November 2006 lease sale and therefore must be served with a copy of any notice of appeal, petition for stay, and statement of reasons.



Selma Sierra
State Director

Enclosures

1. Form 1842-1 (2pp)
2. List of purchasers (1pp)

cc: List of purchasers

James Karkut, Office of the Solicitor, Intermountain Region,
125 South State Street, Suite 6201, Salt Lake City, UT 84138

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

INFORMATION ON TAKING APPEALS TO THE INTERIOR BOARD OF LAND APPEALS

DO NOT APPEAL UNLESS

1. This decision is adverse to you,
AND
2. You believe it is incorrect

IF YOU APPEAL, THE FOLLOWING PROCEDURES MUST BE FOLLOWED

- | | |
|---------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. NOTICE OF APPEAL..... | A person served with the decision being appealed must transmit the notice of appeal in time for it to be filed in the office where it is required to be filed within 30 days after the date of service. If a decision is published in the FEDERAL REGISTER, a person not served with the decision must transmit a notice of appeal in time for it to be filed within 30 days after the date of publication (43 CFR 4.411 and 4.413). |
| 2. WHERE TO FILE NOTICE OF APPEAL.....

WITH COPY TO SOLICITOR... | Bureau of Land Management, Utah State Office, P. O. Box 45155, Salt Lake City, Utah 84145-0151 or
Bureau of Land Management, Utah State Office, 440 West 200 South, Suite 500, Salt Lake City, Utah 84101
and
Regional Solicitor, Room 6201, 125 South State Street, Salt Lake City, Utah 84111 |
| 3. STATEMENT OF REASONS

WITH COPY TO SOLICITOR..... | Within 30 days after filing the Notice of Appeal, File a complete statement of the reasons why you are appealing. This must be filed with the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals, 801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203. If you fully stated your reasons for appealing when filing the Notice of Appeal, no additional statement is necessary (43 CFR 4.412 and 4.413).

and
Regional Solicitor, Room 6201, 125 South State Street, Salt Lake City, Utah 84111 |
| 4. ADVERSE PARTIES..... | Within 15 days after each document is filed, each adverse party named in the decision and the Regional Solicitor or Field Solicitor having jurisdiction over the State in which the appeal arose must be served with a copy of: (a) the Notice of Appeal, (b) the Statement of Reasons, and (c) any other documents filed (43 CFR 4.413). If the decision concerns the use and disposition of public lands, including land selections under the Alaska Native Claims Settlement Act, as amended, service will be made upon the Associated Solicitor, Division of Land and Water Resources, Office of the Solicitor, U.S. Department of the Interior, Washington, D.C. 20240. If the decision concerns the use and disposition of mineral resources, service will be made upon the Associated Solicitor, Division of Mineral Resources, Office of the Solicitor, U.S. Department of the Interior, Washington, D.C. 20240. |
| 5. PROOF OF SERVICE..... | Within 15 days after any document is served on an adverse party, file proof of that service with the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals, 801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203. This may consist of a certified or registered mail "Return Receipt Card" signed by the adverse party (43 CFR 4.401(c)). |
| 6. REQUEST FOR STAY..... | Except where program-specific regulations place this decision in full force and effect or provide for an automatic stay, the decision becomes effective upon the expiration of the time allowed for filing an appeal unless a petition for a stay is timely filed together with a <i>Notice of Appeal</i> (43 CFR 4.21). If you wish to file a petition for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Interior Board of Land Appeals, the petition for a stay must accompany your notice of appeal (43 CFR 4.21 or 43 CFR 2804.1). A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the <i>Notice of Appeal</i> and Petition for a Stay must also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay. Except as other provided by law or other pertinent regulations, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards: (1) the relative harm to the parties if the stay is granted or denied, (2) the likelihood of the appellant's success on the merits, (3) the likelihood of immediate and irreparable harm if the stay is not granted, and (4) whether the public interest favors granting the stay. |

Unless these procedures are followed your appeal will be subject to dismissal (43 CFR 4.402). Be certain that all communications are identified by serial number of the case being appealed.

NOTE: A document is not filed until it is actually received in the proper office (43 CFR 4.401(a)). See 43 CFR Part 4, subpart b for general rules relating to procedures and practice involving appeals.

43 CFR SUBPART 1821--GENERAL INFORMATION

Sec. 1821.10 Where are BLM offices located? (a) In addition to the Headquarters Office in Washington, D.C. and seven national level support and service centers, BLM operates 12 State Offices each having several subsidiary offices called Field Offices. The addresses of the State Offices can be found in the most recent edition of 43 CFR 1821.10. The State Office geographical areas of jurisdiction are as follows:

STATE OFFICES AND AREAS OF JURISDICTION:

Alaska State Office ----- Alaska
Arizona State Office ----- Arizona
California State Office ----- California
Colorado State Office ----- Colorado
Eastern States Office ----- Arkansas, Iowa, Louisiana, Minnesota, Missouri
and, all States east of the Mississippi River
Idaho State Office ----- Idaho
Montana State Office ----- Montana, North Dakota and South Dakota
Nevada State Office ----- Nevada
New Mexico State Office ---- New Mexico, Kansas, Oklahoma and Texas
Oregon State Office ----- Oregon and Washington
Utah State Office ----- Utah
Wyoming State Office ----- Wyoming and Nebraska

(b) A list of the names, addresses, and geographical areas of jurisdiction of all Field Offices of the Bureau of Land Management can be obtained at the above addresses or any office of the Bureau of Land Management, including the Washington Office, Bureau of Land Management, 1849 C Street, NW, Washington, DC 20240.

(Form 1842-1, September 2005)

List of Purchasers for November 2006 SUWA Protested Parcels

Bearcreek-Aberdeen, LLC
1200 17th ST., STE 970
Denver, CO 80202

Craig Clark
P.O. Box 50635
Midland, TX 79710

Craig Settle
5897 S Fulton Way
Greenwood Village, CO 80111-3719

Dobson Exploration LLC
861 West Vine
Tooele, UT 84074

Dorothy Jones
P.O. Box 753
Salt Lake City, UT 84110

Enduring Resources, LLC
475 17th Street, Suite 1500
Denver, CO 80202

Jake Oil of Utah, LLC
50 West Broadway
Salt Lake City, UT 84101

Lane Lasrich
2597 E Bridger Blvd
Sandy, UT 84093

Sonja V. McCormick
1481 S Preston St
Salt Lake City, UT 84108

Turner Petroleum Land
8438 S 1275 E
Sandy, UT 84094